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The Belgian Regions and the European Union:

Unintended partners in unravelling the Belgian state?

Wilfried Swenden

Belgium has long been one of the most Europhile members of the European Union. The current attachment of Belgium to the European Union may seem a paradox: when it joined the European Economic Community, Belgium was still a unitary state. Since 1993 it has been a federal state, made up of two types of regions: three Communities (Flemish Community, the French Community and the German-speaking Community) and three Regions (Flanders, Wallonia and Brussels; for a schematic overview of the Belgian federal system, see Swenden and Jans 2006). Can an increasingly decentralized agenda be successfully combined with an increasingly supranational one, or is there a point where the objectives of those who seek to regionalize powers clash with the policies of the European Union?

This chapter provides some tentative answers to that question. I argue that while Belgium kept its Europhile credentials intact, the regions have deployed various strategies to offset the less welcome effects of European integration. They have largely tolerated the adverse affects of European integration on their domestic levels of autonomy, but only in exchange for greater involvement in intergovernmental co-ordination mechanisms at home (where they pertain to EU affairs) and for much higher levels of regional autonomy in general. Hence, despite (or to some extent because of) Europeanization, the Belgian state has become more decentralized than in the pre-Maastricht or the pre-Nice eras, and the regions have gained further instruments to develop their role as ‘paradiplomatic’ actors in European affairs.

Nonetheless, notwithstanding the fact that for all Belgian regions, the domestic approach takes precedence over the European route to regional interest representation, and despite the mechanisms that allow for regional representation in European policy-making, the chapter's concluding section show that Flanders's 'state-building' ambitions are not entirely satisfied with the present status quo.

Belgium and the European Union

Pro-European political elites supported by a permissive public opinion

Belgian political elites have been supportive of the process of European integration throughout. Even in 2006, when most European political leaders shunned the use of the term federal or put their 'supranational' ideas on hold, Belgian federal Prime Minister Guy Verhofstadt toured around Europe to promote his provocative manifesto for 'the United States of Europe'. To solve its current socio-economic problems and to strengthen its political influence, he argued, the European Union needs more and deeper integration. Although the EU lacks statehood, Verhofstadt claimed that only a 'federal' Europe can give political meaning to a structure which seeks to unite so many different European nations (Verhofstadt 2006). Verhofstadt's analysis was welcomed by most of the political parties and the press across both sides of the linguistic border. Since all Belgian policy makers (and even the two most recent Belgian monarchs) have subscribed to the notion of a federal Belgium, supporting a 'federal' or 'multi-layered' European Union seems a logical and relatively small step.

The pro-European attitude of the Belgian political elite is shared by the public at large. For instance, when a sample of Belgian citizens was asked in the second half of 2005 whether 'generally speaking, Belgian membership of the EU is a good thing', 59

percent agreed, compared with an average of 50 percent for the European Union as a whole (Eurobarometer, 2005: 11). The corresponding share of approval was only higher in Luxembourg, Ireland, the Netherlands and Spain. Half a year later, the gap between Belgium (60 percent) and the EU average (49 percent) had increased to eleven percent (Eurobarometer 2006)

Belgium is not strongly divided along regional or linguistic lines on most European issues. In general, European (as well as Belgian) political institutions are most favourably assessed by citizens who live in Brussels and less favourably by Walloon and Flemish citizens. For instance, a recent study measuring citizens' trust in a vast array of political institutions shows that 18.2 percent of respondents in Flanders trust the European Parliament (much or rather much), compared with 25.0 percent in Wallonia and 30.0 percent in Brussels. By comparison the corresponding levels of trust in the Belgian federal parliament are 19.1 percent (in Flanders), 25.8 percent in Wallonia and 27.8 percent in Brussels (Billiet and Maddens 2006). The relatively high levels of support for the federal parliament in Brussels are consistent with the more 'pro-Belgian' attitude in that part of the country.

However, in contrast to Wallonia and certainly Flanders, Brussels is also the only region in which the European Parliament is trusted more than the federal parliament. Since Brussels hosts the most important European institutions, the relatively high levels of support for the European Parliament should not come as a real surprise. Recent Eurobarometer data confirm the more stridently pro-European attitude of citizens who live in Brussels, yet do not confirm the small gap between Flanders and Wallonia on the previous question. 70 percent of citizens who live in Brussels trust

the ‘institutions of the European Union’, compared with 56 and 55 percent of those citizens living in Wallonia and Flanders respectively (Eurobarometer 2005)

Despite the still widely diffused support for European integration, in recent years, the Belgian consensus on European integration has come under challenge. First, while popular support for the European Union is still high, not all EU policies are warmly embraced. This is particularly apparent with attitudes in Belgium vis-à-vis (further) enlargement. Belgian citizens are even more likely to oppose (further) EU enlargement than citizens in most of the 15 member-states prior to Eastern enlargement. Eurobarometer survey data show that half of Belgium’s citizens oppose further enlargement (some 60 percent if the aspiring member-state is Turkey) against 39 percent for the EU 25 as a whole (Eurobarometer 2005: 55). These data contrast sharply with the support for a European constitution, which at the end of 2005, was more favourably viewed in Belgium than any other member-state (77 percent of the Belgian Eurobarometer respondents supported it, against 63 percent for the EU as a whole). Sixty percent of all Belgians even support the idea that negotiations on a European Constitution should be revived (Eurobarometer 2005: 57). The Flemish and Walloons are united in their scepticism towards enlargement and in their support for renewed European constitutional talks.

Second, not all political parties unconditionally support European integration, with some regional variation in the nature of the criticisms voiced. In Flanders, criticism has primarily emerges from the extreme-right wing *Vlaams Belang* and the now defunct ethno-regionalist party *Volkspartij*. Their fear was/is that the European Union is eroding some of the hard-fought gains of regional autonomy, particularly the

recognition of Dutch (Flemish) as a significant European language. On the other hand, (Dutch and Francophone) Greens and Social-Democratic parties increasingly argue that the current policies of the EU are too market-driven and, in light of monetary union and enlargement, require some form of social correction (for instance by adding specific social criteria in a renegotiated Constitutional Treaty).

The third voice of criticism stems from the regions. Before specifying why the regions (and in particular Flanders) have become more critical of European integration in recent years, we should ask more generally what have been the costs and benefits of European integration from their viewpoint.

European Integration and the Belgian regions

European integration has offered major opportunities to the regions. The four freedoms that came along with the creation of an internal market certainly contributed to a further opening up of the Belgian economy. At present exports make up about 60 percent of Belgian GDP, making the Belgian economy one of the most open economies in the world. Significantly, the Belgian regions export more to other countries (mostly other EU member-states) than they trade with one another. Although we cannot estimate what the economic position of the regions would be *without a* European internal market, European integration has certainly strengthened their economic health and well-being. Increasing trade with other member-states or regions has also them less dependent on the federal government. This is particularly the case for Flanders, which at present accounts for 70 percent of all Belgian exports.

Although the EU regulates in many fields earmarked as regional affairs in Belgium's domestic distribution of competencies, the country's regions have occasionally been able to use EU policies to their advantage. For instance, the constitutional reforms of 1980 gave the Belgian Regions the most important role in regional economic policy: public investment, economic development, land use and aspects of energy and employment policy became Regional competencies. The European Commission was therefore keen on engaging with the Belgian Regions when developing its revamped cohesion policies (De Rynck 1996: 136-143). However, in 1985 the Belgian Regions lacked the right to conduct foreign (including European) affairs in matters over which they held domestic competence. Hence, the Belgian Permanent Representation and the Department of Foreign Affairs insisted that *they* should play the lead role in these negotiations, particularly since some aspects of the proposed cohesion package also touched upon what then were still national competencies (agriculture and vocational training for which the regional agencies still had to be set up). Yet, as De Rynck put it, 'the regions took advantage of the lack of clarity to strengthen their position on the European forum. They deployed an offensive strategy, claiming that they had the 'implied power' to monopolize contacts with the EC in the preparation, decision-making and implementation of structural fund policies' (De Rynck 1996: 141). This strategy paid off. Further constitutional reforms (1988, 1992) made the Regions responsible for nearly all aspects that are covered by EU cohesion policies. Furthermore they strengthened the opportunities of the regions (Regions and Communities) to engage directly with the European Union on matters in which they hold legislative competencies at home (see later discussion). Even before 1988 and 1992, the Commission bypassed the Belgian centre by preferring to negotiate partnership agreements with the Belgian regions instead.

Yet European integration also imposes costs on the regions. The ‘Maastricht’ budgetary criteria bind all public authorities and thus also constrain the borrowing and spending capacity of sub-state authorities. Meanwhile, European policies undermine levels of regional autonomy in areas over which the Belgian regions have gained domestic legislative and administrative competence such as agriculture, environmental policy, competition policy, vocational training, or energy policy. Most of the above-mentioned policies are Regional policies. Community policies (such as education and culture) tend to be less affected by European integration. The same holds for federal competencies such as foreign policy, defence, the most important taxes (personal income, VAT and corporate income tax) and almost the entire social security field: energy policy and monetary policy represent two obvious and significant exceptions.

Furthermore, regional adaptation costs are high because in three respects the European multi-layered structure is at odds with the Belgian federal order. First, constitutional reforms which brought about the federalization of Belgium made little reference to the process of European integration. Hardly any thought was given on how the domestic distribution of competencies would match the European legal order. European regulation sometimes crosscuts the domestic distribution of competencies. For instance environmental regulation touches upon policies of the federal *and* the Regional governments.

Second, the *method* for allocating EU competencies does not comply with that of distributing competencies under federalism, Belgian style. The bulk of EU legislation

requires member-state implementation. This ‘functional’ form of federalism has much more in common with the German than with the Belgian federal order (Börzel 2005). The Belgian Regions and Communities are not used to implementing policies on which they do not legislate. Furthermore, provided that the EU regulates within its assigned or ‘conferred’ competencies, EU regulation pre-empts incompatible member-state regulation (i.e. the supremacy of EU law). Again, this is reminiscent of the category of ‘concurrent’ legislation which is found in the German Basic Law. Yet in Belgium, federal and regional laws stand on equal footing, and the number of concurrent bills is kept to an absolute minimum.

Finally, and perhaps most importantly, although Article 203 of the Maastricht Treaty opened access to regional representatives in the Council, Belgian votes cannot be split up along regional lines. Thus, even EU regulations which touch upon competencies which the Belgian constitution assigns as exclusively regional require a common viewpoint in the Council. In this sense, the EU reduces the capacity for regional policy divergence on issues in which European and regional interests intersect.

Before discussing the strategies which the regions have deployed to overcome the above challenges, one should note that the Flemish government and administration have voiced the greatest concern about European regulatory intrusion. This should not come as a surprise. Of all three Regions, Flanders has the strongest sense of regional (national) identity and state-building ambitions. Despite its dominant position in the Belgian federation, demographically and economically, it is more sensitive to cultural and linguistic issues.¹ By comparison, the Walloon government has taken a more relaxed attitude. The Walloon government has lower ‘state-hood’ ambitions and

European integration has never threatened (or has been perceived as a threat to) the prominent role of French in Brussels and its periphery. The greater reliance of the Walloon government on European regional development funds may also partially account for this attitude: of 1.1 billion Euros which the EU pledged to the Belgian regions as regional development aid between 2000 and 2006, 870 million Euros went into Walloon coffers (645 million Euros of which were earmarked as transitional support to the Walloon province of Hainaut which is set to lose its Objective 1 status thereafter; Regional Development Programmes 2000-2006).

The Regional Response to the challenge of European Integration

In the following paragraphs I will seek to illustrate the strategic response which the Belgian regions have developed to try to reduce the adverse effects of European integration on their levels of autonomy. The Belgian regions have always deployed a double strategy to strengthen their position. On the one hand they have joined other European regions in calling for a better enforcement of the subsidiarity principle, a clearer delimitation of competencies, improved access to the Council of Ministers, and a stronger role for the Committee of the Regions. On the other hand they have tried to maximize their position at home, by securing a right to be involved in foreign and European policy. We focus here mainly on the second strategy and first consider the position of the Belgian regions in external relations more generally. Arguably, no other EU member-state (even those with federal constitutions) have granted its regions an equally strong right in foreign policy-making. In this regard, the Belgian solution is more '*confederal*' than '*federal*'.

High politics or the role of the regions in external relations and in debating EU Treaty Reform

The constitutional reforms of 1992-1993 adopted the principle '*in foro interno, in foro externo*' (Alen and Muylle 2003). It remains one of the most radical features of Belgian federalism. According to this principle, the Regions and Communities are entitled to sign treaties and represent Belgium abroad in areas that fall within their domestic sphere of competence. Hence, the Communities could sign a treaty with a state or region seeking closer educational or cultural co-operation, *without* the concurrent consent of the federal government. Similarly, the Regions could sign a treaty with another state or region, joining efforts in promoting (trans-border) tourism. There are few *domestic* constraints to the treaty-making capacity of the regions in areas in which they are competent. The federal level can stop the regions from signing treaties with states which Belgium (i.e. the federal government) does not recognize or with which it has no diplomatic ties. Furthermore, the regions cannot conclude treaties which would violate Belgium's supranational or international obligations (Alen and Muylle 2003: 637). Treaties which affect the competencies of the regions, either in part or in their entirety require the consent of the parliaments of the affected regions. This provides the regions with a potentially powerful weapon, for at least in theory they could refuse to endorse an agreement which does not sufficiently represent their interests, or centralizes Belgian federalism through the international backdoor. Paradoxically, regional parliaments must consent to Treaty changes that affect their domestic competencies whereas their explicit consent is not required for *domestic* (constitutional) changes with the same effect.

However, the international environment raises some direct constraints. Two of these feature in the context of the European Union. First, international organizations, such as the United Nations or OECD only recognize Treaties among states. Thus, even if issues are discussed that exclusively touch upon regional competencies, delegates, even if they are delegates appointed by the regions, will officially represent Belgium. As a consequence, Belgium will have to speak with one voice. International organizations do not leave room for three distinct Regional or three distinct Community viewpoints on the same matter. Conversely, international courts only hold *Belgium* to account for a failure to comply with international norms, although the regions may be responsible for transposing such norms into domestic law. Second, even if the regions had autonomous capacity to sign treaties, in a multilateral context, treaties may often pertain to a subject matter that is partly federal *and* partly regional (so called ‘mixed treaties’). The domestic answer to both challenges has been to strengthen domestic intergovernmental mechanisms allowing all the relevant domestic players to be involved in timely fashion in the negotiations leading up to such international decisions (Alen and Muylle 2003: 626-648). Where authorised by the international organization concerned, regional representatives are included in the relevant international delegation. As is the case for intergovernmental relations at home, there is little room for central pre-emption: common action is the fruit of common sense, not of hierarchical control by the centre.

In practice, the position of the regions is not always as strong as the theoretical picture would suggest. The federal government alone retains responsibility for selecting and appointing diplomats. Regions and Communities can appoint *attachés* who work together with the federal diplomats, but they are answerable to the local head of

mission (Ambassador, Permanent Representative or consul), always a federally/appointed diplomat.

In the context of the European Union, the equivalent of ‘Treaty-negotiations’ are intergovernmental conferences (IGC). Regional representatives can be included in the Belgian negotiation team, either at the ministerial level or at the highest diplomatic level (i.e. COREPER I and II). For instance, regional negotiators took part in the sessions discussing employment policy, traffic, environmental policy, health policy, the subsidiarity principle and the Committee of the Regions in the IGC which produced the Treaty of Amsterdam (Kerremans 2000: 502). Yet, as Kerremans observes, before long the federal level gained the upper hand in these negotiations. For starters, regional representatives made up only a quarter of the Belgian negotiation team. Furthermore, the Belgian regions became the victim of their own consociational working methods, at least in the ‘European’ arena. Here, Belgian regions observe a rotation practice: a Region or a Community only takes up the regional seat in a Belgian delegation for a period of six months, prior to passing it on to the next Region or Community in line. The federal government can (mis)use its representative *continuity* to persuade the regional representatives of the limited room for manoeuvre at the European negotiation table. Domestic fragmentation may ‘strengthen’ the position of the international negotiator vis-à-vis other state delegations (Putnam 1988), but in the Belgian case the effects work as much in the opposite direction. The federal government can play out discussions which took place more than just six months ago as a tool to bring the regional delegations in line with its own preferences. Finally, since IGCs decide by unanimity, the effects of a non-

agreement are draconian (a Belgian veto). The alternative – withholding regional parliamentary consent – during the ratification phase is equally drastic.²

Despite the unusual style of the negotiations which led to the recently failed draft constitutional Treaty, the Belgian regions did not improve their access compared with preceding IGCs (Bursens 2004). The Convention which preceded the IGC created more room for participation of European and national parliamentary delegates in discussions on a new draft Treaty, but this did not necessarily increase the role of the regions. During the Convention, the co-ordination of the Belgian viewpoint rested not only with the federal department of Foreign Affairs (and the federal Prime Minister) but also with various *ad hoc* groups. Some of these groups were rooted in the Belgian Presidency of the European Union (2001) and therefore provided for a larger input from the federal Prime Minister and his entourage. Others brought together all Belgian members of the Convention, and thus included former Prime Minister Jean-Luc Dehaene (as vice-president of the Convention), the then First Minister (‘Minister-President’) of Flanders and a Flemish minister in the Brussels regional executive. The Flemish and Brussels’ ministers attended the Convention as members representing the Committee of the Regions. In the view of Peter Bursens they operated more as representatives of their respective political groups than as regional actors. Since the main foreign policy actors as well as the federal and regional Prime Ministers represented the same party family, intra-party co-ordination partially compensated for the lack of direct regional input in the Convention debates (Bursens 2004: 346-347).

The Role of the regions in ‘Low’ Politics: regional representation in the Council and domestic co-ordination of the ‘Belgian viewpoint’

In contrast with the negotiations leading up to Treaty reforms, the Belgian regions are in a stronger position to make their mark on routine Council business, although they must again forge a common viewpoint in this perspective. Article 203 of Maastricht opened the way for direct involvement of regional representatives in the Council. A co-operation agreement between the federal state and the regions (Regions and Communities), regulates the representation of the regions in sessions of the Council (ministerial meetings and COREPER; Alen and Muylle 2003: 644, fn. 83). In several ways the representational rules run parallel to the mechanisms which determine the participation of the regions in international treaty negotiations:

- The regions are represented by only one Region or one Community
- With the exceptions of discussions of agriculture and fisheries, where represented, regions usually apply the rotation principle: i.e. after six months, a Community or Region will pass on its seat to the next Community or Region in line. Because there are so many different functional Council meetings, each Region or Community will always represent Belgium in at least one of them (Kerremans 2000).
- Regions do not participate in meetings on matters that are exclusively federal. This provision applies to Council meetings on general affairs, ECOFIN, budgetary negotiations, justice, telecommunications policy, development aid and civil protection.
- In meetings which primarily yet not exclusively pertain to federal matters, Belgium is represented by one federal lead negotiator and one regional assistant negotiator. The latter has no speaking rights; her main role is to liaise with the regions should Belgium depart from its initial negotiating position, and to communicate the outcome of the negotiations to the regions. This

provision applies to Council gatherings on internal market policy, health policy, environmental policy, transport policy and social affairs. When assuming the status of ‘assistant negotiators’ regions are not normally represented by a regional minister but by one of his/her representatives instead.

- In meetings which primarily, yet not exclusively deal with regional matters, the opposite provision applies: Belgium is represented by one regional lead negotiator and by one assistant negotiator, who represents the federal government. Currently this provision applies to Council meetings on industrial and R&D policy.
- In meetings which exclusively touch upon regional issues, Belgium is exclusively represented by a regional lead negotiator. This provision applies to Council meetings on culture, education, tourism, youth policy, housing policy and spatial planning.
- The Belgian viewpoint on fisheries policy determined exclusively by the Flemish Region (since the other Regions lack a coastline)
- Council meetings on agricultural policy are attended by the federal minister for agriculture (or his/her representative) and sometimes also by the Flemish or Walloon minister of agriculture. However, the domestic intergovernmental mechanisms which determine the Belgian position in the Council are dominated by representatives of the Flemish and Walloon regional governments which hold an effective veto-right (since there is no significant agricultural industry in the Brussels Capital Region, a representative of this Region only occasionally participates in such meetings but does not normally

impose an opinion; similarly, the federal government merely ‘provides information and opinions’; Beyers and Bursens; 2006).

Although these mechanisms make Council meetings ‘fit’ the Belgian domestic setting, they do not guarantee an effective representation of regional interests at the EU level. Intensive domestic intergovernmental negotiations are needed to that purpose, from which members of the affected federal and regional legislatures are largely sidelined. Indeed, as is often the case in parliamentary federations, intergovernmental relations strengthen the executive within the policy process (see Watts and Smiley 1985 for comparative observations).

In addition to strengthening the role of the executives, the need to coordinate European policies across different levels of government strengthens the federal government and thus implicitly centralizes the Belgian polity (Beyers and Bursens 2006). This is so because even for areas of EU legislation in which the regions play a more prominent role than the federal government, intergovernmental co-ordination is required. The federal government is instrumental in bringing the relevant regional parties together. As is the case for intergovernmental conferences, the Department of Foreign Affairs plays an important role, particularly its cell on ‘European Integration and Coordination’ (P. 11). P.11 assembles representatives of the federal and regional governments who are specialized in European affairs. It convenes on a weekly basis and discusses the issues which the Council will debate in the following week. P.11 works as a general co-ordination body in European affairs. Additional co-ordination meetings are needed at a lower functional or sectoral level. For instance in the field of environmental policy (a shared federal-Regional competence), a co-ordination

committee on international environmental policy operates. It brings together representatives from the federal and regional governments as well as federal and regional attaches who work in the Belgian Permanent Representation to the European Union (Kerremans, 2000b; Bursens 2002: 182). A failure to reach consensus in P.11 can trigger a meeting of the Inter-ministerial Committee for Foreign Affairs. Unlike the former it is composed of ministerial representatives.

Importantly, all forums for intergovernmental co-ordination require unanimity. Hence, each player (federal government or any of the regions involved) has a veto-right. In theory, this would even apply to meetings which seek to bridge inter-regional differences of opinion on matters for which the regions hold exclusive domestic competence (in practice the federal representatives play the role of mediators).

Belgian domestic inter-governmental relations *on non-EU related matters* frequently end in stalemate: inter-governmental relations regularly emerge as a measure of last resort, and no government is really in a position to push through its view. Traditionally the federal government played a key role in brokering a solution because it comprises representatives from both language groups. Furthermore, at least until 2004 the federal and regional governments were usually made up of representatives from the same parties (so-called ‘congruent coalitions; see Deschouwer 2006). Without a solution emerging from the federal (often six-party) coalition, matters were left unresolved, or, in the worst case scenario an early parliamentary dissolution ensued. Since 2004 the presence of incongruent coalitions at the federal and regional levels of government has increased the need for regular intergovernmental coordination meetings, but has not increased the success-rate of issues that end up at

the domestic negotiation table. Sometimes parties can spin electoral fortune out of such a crisis, particularly if they can shift the blame onto a government in which they do not participate as a coalition partner.

The nature of inter-governmental relations is different, however, when inter-governmental negotiations are needed to work out a Belgian viewpoint *on EU matters*. The pressure to reach an agreement is much higher. Tanja Börzel's observation with regard to the co-ordination of the Spanish regions in EU decision-making applies to the Belgian case as well (Börzel 2002). In the context of the EU, regions are more willing to compromise than in a purely domestic co-ordination game. This is so because they have nothing to gain from fighting it out on EU affairs. A failure to compromise implies that Belgium has to abstain in Council meetings. Abstentions do not count as negative votes; hence they cannot block Council decisions which require unanimity. However, abstentions can have a more negative effect when the Council decides by Qualified Majority since they are not counted among the votes in favour of a decision. With twenty-five member-states, the likelihood that the Belgian indecisiveness would affect the overall outcome of a Council vote is rather small. More importantly, a failure to agree on a common viewpoint reduces Belgium's authority in the Council (and by implication also that of the regions; Kerremans 2000: 494-496). One region's veto may reduce the willingness of another region or even that of the federal government to compromise on the next or a further occasion requiring intergovernmental coordination (the rotation principle means that regions may have to rely on the goodwill of a partner region to defend their interests). The frequency of negotiations needed to work out a domestic viewpoint leave ample room for domestic 'log-rolling' (or 'revenge taking').

Ultimately, Belgium would still have to comply with legislation on which it could not formulate a common viewpoint. Abstentions, therefore, have been very rare.

Despite all the efforts made to co-ordinate and agree a negotiating position, an agreement on how to vote in the Council does not guarantee that Belgian representatives will ultimately vote for *that* position in the Council. Belgium is only one of twenty-five member-states and, as negotiations proceed, the contours within which a compromise solution may be framed can shift. The Belgian negotiator has to know what room of manoeuvre she has in moving away from the domestically sanctioned proposal. In the first instance, the lead negotiator will have to assess whether a suggested compromise solution would still fall within acceptable limits of the domestic position. Sometimes such an assessment is difficult, particularly if the assistant negotiator is a civil servant or a member of a ministerial *cabinet*, rather than a minister himself. As Kerremans asserts, this is often the case when the regions assume the position of assistant negotiators. A regional civil servant is not likely to contradict the viewpoints of a more senior federal minister (Kerremans 2000: 501). Hence, policies may be adopted to which a regional minister would have objected (thus, decision-making implicitly shifts from the regional to the federal policy level, contributing to implicit centralization). When the regions delegate the lead negotiator, the presence of a regional minister is almost guaranteed and the risk of ‘over-riding’ regional interests is much lower. Yet, even here, regional ministers must form a common viewpoint. If such matters cannot be discussed ‘on the phone’ the lead negotiator may take a decision ‘ad referendum’. She will then notify the Council that Belgium needs an extra three days to confirm or adjust its decision. This short reflection period should be sufficient to convene informal gatherings, a more

formalized P.11 meeting or even an inter-ministerial conference. However, in practice, ad referendum decisions are rarely departed from, particularly if they could upset a hard-fought compromise solution involving all EU member-states (Kerremans 2000: 502).

The role of the Regions in Low Politics: regional involvement in different phases of the European policy cycle

Meetings in the Council may be very important, but they are only a part of the European policy cycle. The Commission still holds the prerogative in drafting legislation, but often does so after extensive discussions with member-states, relevant interest groups and other non-state actors. The question arises whether the Belgian regions have sufficient access to the Commission or its relevant Directorate-Generals and whether the regional executives and parliaments are informed in a timely manner of any legislative proposals which the Commission has made.

Despite the Commission's attempts to liaise with the regions, for instance in developing partnership agreements with regions as part of its cohesion policy framework, there is little evidence to suggest that the regions are systematically involved in the policy preparation phase. Although the Belgian Permanent Representation passes on draft legislative proposals to all the affected Belgian governments and parliaments, most of the consultation process will have already been completed when these reach the Belgian regions. Peter Bursens and Sarah Helsen have pointed to various weaknesses in the Belgian co-ordination mechanisms as well as in the interaction between the European and Belgian (regional) authorities (Bursens and Helsen 2002; Bursens 2002).

With regard to the domestic co-ordination mechanisms, they point to the absence of a clear linkage between those who negotiate on behalf of Belgium in the Commission, Council and European Parliament, and those who are responsible for implementing these policies. For instance, *cabinetards* or civil servants in the Belgian Ministry of Foreign Affairs who assist in the preparation of a Belgian position in the Interministerial Conference for Foreign Affairs and P.11 hardly co-operate at all with civil servants in the same Ministry who monitor the implementation of EU policies. Unlike P.11, the latter has a 'judicial character' and is mainly staffed by lawyers (Bursens and Helsen 2002: 9). This artificial separation between both types of civil servants produces a discontinuity in information and can contribute to an inconsistent implementation of EU policies.

With respect to the interaction between the European and Belgian regional authorities the following three weaknesses arise (Bursens 2002; Bursens and Helsen 2002). First, Belgian regional authorities are not widely consulted in expert-meetings which precede the issuing of draft legislation. Second, although adequate regional involvement in the Council is provided at the ministerial level and that of the Permanent Representation (COREPER I and II), this is not the case at the level of the working groups. Nonetheless, the working groups often establish the contours of a European-wide compromise. Finally, Regions are also insufficiently involved in committees which discuss the implementation of EU legislation. The *comitology* committees are always made up of delegates from the national governments. A more co-ordinated approach between the federal and regional governments is needed to ensure that the regions adequately (and uniformly) implement EU policies.

The Paradox of Belgian Euro politics: Euro-scepticism on the ground?

There is a paradox in the Belgian attitudes towards the EU. On the one hand, the political elites strongly support the cause of European integration and even embrace a level of European integration which at present the European Commission and European Parliament (the two most 'supranational' political institutions) do not dare to support. On the other hand, Belgium does not have the strongest of records in terms of implementing EU legislation. In 1997, Belgium notified the Commission of the transposition of 91.8 percent of all EU directives, then the worst record of all EU member-states. Aware of its bad performance, the federal government (in co-operation with the regional governments) launched an effort to improve the Belgian record. For instance, shortly after Guy Verhofstadt became federal Prime Minister in 1999, a junior minister was appointed whose primary function it was to oversee the timely and correct implementation of EU legislation, to establish a databank to this effect and to liaise with the regional authorities on such matters.

This effort paid off. By the end of 2000, Belgium had already notified the Commission of the transposition of 97.9 percent of all EU directives; by March 2006, this percentage had gone up to 99.04 percent (European Commission 2006). Although a significant improvement in absolute and relative terms, notifications are based on a member-state's subjective perception as passed to the European Commission. Hence, member-states with a better notification record could be confronted with higher infringement rates (Bursens 2002: 177). In this respect the Belgian picture looks less promising. For instance, in its most recent *Annual Report on Monitoring the application of Community Law*, Belgium is certainly ranked among the bottom group

of countries who allegedly have not or incorrectly transposed EU legislation, or have failed to communicate transition measures to the European authorities (European Commission, 2004). In 2004, Belgium featured in 16 new cases submitted to the Court of Justice, the fourth highest number of court referrals after Greece (involving 27 cases), Italy (26 cases) and France (23 cases; European Commission 2004). In the same year, the Commission observed 79 infringements of EU law by Belgium, the sixth highest figure for the 15 'old' member-states of the European Union (European Commission 2004). The Commission's statistical overview does not allow us to consider which policy sectors have caused more infringement procedures and to establish whether the infringement is caused by negligence of the federal or some or several of the regional governments.

The question arises whether the defaults in the domestic co-ordination mechanisms that were highlighted above, or the sheer complexity of these mechanisms could be held responsible for the relatively poor Belgian performance? We can only provide some provisional answers here, since more systematic research is needed to identify the role of 'domestic complexity' and 'federalism' as crucial explanatory variables. In fact we could offer three rival hypotheses.

The first hypothesis predicts that the implementation record is better in policy areas which require relatively little intergovernmental co-operation. The intergovernmental complexity that must be overcome to formulate a common viewpoint slows down decision-making. Environmental policies exemplify such a complex policy area. The federal government still controls product standards, protection from radioactive radiation, transit of waste materials and maritime environment, but the Regions

control the other aspects of environmental policy. For instance, the ‘packaging waste directive’ touched upon the competences of no less than four governments (Bursens 2002: 182). Furthermore, environmental rules sometimes affect other regional competencies, such as agriculture, transport or public health. Thus, they may require further interdepartmental co-ordination within and across levels of government. As Kerremans has demonstrated, next to a co-ordination committee on international environmental policy, which functions as part of the P.11 machinery, dozens of functional sub-committees or working groups have been established to prepare the Belgian viewpoint in the Council (Kerremans 2000b). The complexity of these mechanisms prevents the formation of a prominent and timely Belgian viewpoint in the Commission’s expert Committees. In environmental policy, Belgium comes closer to being a ‘policy-taker’ than a ‘policy-maker’, which contributes to lowering its implementation rate. This record contrasts with the more favourable implementation score for labour directives (Bursens 2002): labour policies are still largely controlled by the centre, thus involve a more simplified co-ordination mechanism at home. Labour policies also affect well organized and relatively centralized interest groups who are allowed to play a more prominent role in the Commissions’ expert groups. Therefore, EU labour directives are more in tune with Belgian domestic preferences and stand a higher chance of being faithfully implemented (Bursens 2002).

A second hypothesis suggests that the cause of different implementation records with regards in different policies is related less to the complexity of the domestic arrangements, than to the overall enthusiasm and expertise which a member-state or its regions can put forward in these policies. For instance, one could make the case that even if environmental policy were entirely regulated by the centre or the regions,

Belgium's implementation record would not be much higher. Belgium was an environmental laggard long before the Regions gained responsibility in this field; by comparison, Belgium always enjoyed a strong reputation in labour law. More research is needed to show which of both explanations has the strongest predictive power.

The final hypothesis draws parallels between the implementation records in domestic and in European legislation. Although there are no comparative databanks which allow us to assess how well a member-state implements its own legislation, researchers are aware of differences in political culture with regard to the significance which citizens attach to the law. In comparative terms Belgian citizens are rather 'open to a flexible interpretation of the law' (Maesschalk and Van De Walle, 2006). Belgium may in fact fit better into a Latin or South European than a Northern legal culture: many and relatively detailed pieces of legislation are produced, but not all of them will be fully implemented, let alone faithfully observed (in this regard the survey data suggest that Flanders is at least as 'Southern' as Wallonia) .

Conclusion: future strategies and grievances of the Belgian Regions

Compared with regions from other member-states that are discussed in this book, the Belgian regions are entrusted with extra-ordinary instruments to make themselves heard at the European level. Yet they are not entirely satisfied with the current status quo. The requirement that Belgium must cast one vote, and the central role of the federal Foreign Ministry, P.11 and the Permanent Representation in co-ordinating the Belgian viewpoint, are said to 'centralize' Belgian federalism through the European back-door (Beyers and Bursens 2006). This view should be nuanced. After all,

Belgian federalism is now much more decentralized than ten years ago, even in policy areas that are most affected by Europeanization such as agriculture and environmental regulation (indeed twenty years ago, both policies were still entirely controlled by the centre). Yet, one could argue that Europeanization has slowed the unravelling of the Belgian state, by forcing the regions into co-operative behaviour and by making them partially reliant on federal assistance for that co-operation.

At one level the Belgian regions pursue similar strategies to further enhance their voice in Europe. They all liaise with regions with which they share common interests or constitutional levels of autonomy: the stateless nations of Catalonia, the Basque Country or Scotland, or important regions with legislative powers such as Bavaria, Piedmont or Lombardy. In recent years, Flanders, in particular, has been one of the most active members of REGLEG. Unlike the Committee of the Regions, REGLEG is more homogeneous in membership, as it unites a group of regions with directly elected assemblies which control genuine legislative powers. Yet the European regions are very heterogeneous and one could argue that their collective strength has weakened as a result of enlargement (most new entrants are small member-states or lack a significant regional tier of government). Therefore, the Belgian regions also seek to strengthen their role in the *domestic* co-ordination of EU policies by lobbying the federal government. They are in a strong position to do so: the Belgian federal government is made up from representatives of non-state wide parties whose organization and electoral reach largely correspond with the borders of the two dominant regions: Flanders and Wallonia. In recent years, the share of Regional or Community representatives in the Permanent Belgian Representation has steadily increased to above 20 percent. Regions have also commissioned research into

strengthening their input in the ‘up-’ and ‘downloading’ phase of European decision-making. In this regard, Bursens and Helsen have advocated the creation of a ‘European Co-ordination Body’: horizontally, it would do away with the artificial separation between negotiators and implementers of European policy; vertically it would integrate representatives of the affected federal and regional ministries in regular policy co-operation. Such a body should be staffed with permanent personnel, rather than with civil servants who temporarily leave their functions at the federal and regional administrations (Bursens and Helsen 2002: 16). The Belgian regions are also united in their effort to advocate direct access to the European Court of Justice and to involve the regional parliaments in testing the subsidiarity principle.

At a different level, however, the strategies of the Belgian regions do not run on parallel tracks. As the region with the strongest national identity, Flanders has pursued bilateral strategies which clearly tried to ‘circumvent’ the federal government or the other regions. In September 2006 (and therefore, perhaps, surprisingly late in the day), the Flemish government established a regional office in Brussels to liaise directly with other European regions, member-states and the European institutions. The Flemish government has also expressed discontent with the EU requirement to vote as one country. It has asked Flemish researchers to look into the possibility of ‘splitting up’ the vote in the Council (Vlaamse Standpunten 2003). In 2003, it suggested that in areas decided by the Regions, the then ten Belgian Council votes could be divided between the Regions, with 5 Flemish, 4 Walloon and 1 Brussels vote. With regards Community competences the distribution between the Communities could be Flanders 5, *Bruxelles-Wallonie* 4 and the German-speaking Community 1. However, there was little European support for this solution, not even among the regions of the other

federal EU member-states. What may work for Belgium would not work as well for Germany (where the number of sub-units is much higher). Furthermore, to split up a national vote along regional lines is like opening up Pandora's Box: why not divide the votes of member-states along party-political lines as well? For instance, the German votes could be split among the two major parties of its present Grand Coalition government. Nonetheless, the current situation leaves the Flemish government frustrated: the Baltic States or Malta have a stronger input than Flanders which represents more people. The centrifugal and dual logic of Belgian federalism clashes with the centripetal and co-operative logic of European multi-level governance: co-operation just goes against the prevailing domestic mood, and Flemish frustration suggests that Flanders sometimes reaches compromises on European policies because it has to, not because it wants to.

With only partial backing from other European regions for its suggestions, and without the immediate prospects for a renegotiated constitutional Treaty, Flanders is more likely to place greater emphasis on the domestic strategy. Half the federal government is made up of Flemish delegates representing Flemish (i.e. non-state wide) parties. These federal ministers are more receptive to regional demands than say the members of federal governments elsewhere who usually represent a (regional branch of) a state-wide party.

Already in the lead up to Maastricht, several European regions warned their national governments against ceding authority to Europe in areas of regional competence (Jeffery 1997). Indirectly, they contributed to slowing down the transfer of competencies from the domestic to the European arena. Paraphrasing Alan S.

Milward, Charlie Jeffery has referred to this process as the ‘regional rescue of the nation-state’ (Jeffery 2006). In Belgium, however, there is a more straightforward option: with a federal government that is already ‘captured’ by representatives of non-state wide parties, the unravelling of the centre will gain further speed. Most Flemish parties now advocate more regional powers in health and social policy as well as taxation. Although such decisions can be blocked by the French-speakers who are not served by most of these proposals, following the 2007 general elections Flemish pressure to regionalize more powers is high. A failure to reach an agreement on a future Belgian state reform could jeopardize the formation of a federal government.

In the short term, campaigning for more regional autonomy at home may be the most feasible Flemish strategy. Gains in this regard could offset any losses incurred by EU regulatory centralization past and future. In the *long* run, the loser could well turn out to be the federal government whose role would be effectively reduced to that of a regional interest broker in EU affairs.³ Without Belgian media or parties it is hard to see who would speak up for the Belgian centre. Therefore, the federal government may have been hollowed out too much before the Belgian regions could come to its rescue, even if they wanted to. In this sense Europeanization may speed up the process of domestic unravelling, albeit unintentionally.

Notes

¹ For instance, in the 1990s Belgium postponed extending voting rights for (non-Belgian) EU nationals resident in Belgium for European and municipal elections (Kerremans and Beyers 1998: 28). The Flemish parties insisted on a Belgian exemption because it was feared that granting those voting rights earlier could upset the delicate balance between Dutch- and French-speakers in the Brussels’ suburbs.

The latter are situated in Flanders but comprise a majority of French-speakers. Most (non-Belgian) EU citizens who live there are more likely to speak French than Dutch, and thus it was assumed would vote more likely for a French-speaking party.

² However, this option was once seriously contemplated. The Treaty of Amsterdam affected federal, Regional and Community competencies. Therefore, in addition to the federal parliament, the Flemish Parliament, the Walloon Parliament, the Brussels Regional Parliament, the Parliament of the German-speaking Community and the French Community Parliament had to endorse it. Although Brussels is a Region and not a Community, the Dutch and French-speaking members of the Brussels Capital Regional Parliament constitute separate Community Commissions with implementing authority in Community legislation (in the case of the French Community Commission, that authority has been extended to primary legislation in educational matters). Therefore the Treaty also required the consent of the Flemish and French Community Commissions in Brussels. Due to a political crisis among the Dutch-speaking members of the Brussels executive, the executive of the Flemish Community Council temporarily lacked majority support in the Council. The crisis revolved entirely around a *domestic* issue since few members rejected the Treaty of Amsterdam. Nonetheless, the Flemish opposition parties threatened to withhold their support unless the then Brussels executive first made concessions with regards regional politics. Consequently, of all EU member-states, Belgium was the last to ratify the Amsterdam Treaty.

³ Importantly, this process may take a long time: the centre still holds important competencies and the French-speakers have less interest in unravelling the centre given the current flow of redistributive payments. They can use their veto-position in the centre to stop or slow down the regionalization of powers (such as regional fiscal autonomy) which would work against their interests.